IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.839 OF 2006
WITH
CIVIL APPLICATION NO.1157 OF 2006

Samata Industrial Developers. ..Appellants.

V/s.

Stella Anthony Machado & Ors. ..Respondents.

Mr.Umesh Shetty with Ms. Yamini Chandran i/b. M/s. Umesh Shetty & Co. for appellants.

Mr. Bajaj with Tasneem A. Saria i/b. M/s. S.K. Srivastav & Co. for Respondent Nos. 1 to 7.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 28, 2007.

P.C. :

1. Heard counsel for the parties. Leave to amend to insert words "Notice of Motion No.3408 of 2005 is dismissed with cost." at page 15, as prayed is granted. Amendment be carried out forthwith.

2. Admit.

3. Mr.Bajaj waives notice for respondent Nos. 1 to 7.

4. As short question is involved, appeal is taken up for final disposal forthwith by consent.

5. This appeal from order takes exception to the Judgment and Order passed by the City Civil Court at Bombay dated 6th June, 2006 in Notice of Motion No.3408 of 2005 in L.C. Suit No.3499 of 2005. The appellants/plaintiffs claimed to be the owner of the suit property in view of the registered Conveyance Deed executed in their favour by their predecessor trust on 15th June, 2004 and registered on 6th July, 2004. According to the appellants/plaintiffs, even before the Conveyance deed was executed, the Trust had permitted the appellants/plaintiffs to take necessary steps to protect, safeguard and identify suit property. It is the positive case of the appellants/plaintiffs that two iron gates were put up at the entrance of the suit property which, however, were illegally removed by the Constituted Attorney of the defendant- one Mr.Prabhakar Salian, in August, 2002. Soon thereafter, the plaintiffs lodged complaint with the local police. The fact of existence of said iron gates at the entrance of the property is reinforced on the basis of photographs taken at the relevant time. The plaintiffs wanted to reerect the said two iron gates at the entrance of the property. However, as the plaintiffs apprehended obstructions by the defendants, thought it

appropriate to institute suit before the City Civil Court for the following reliefs.

(a) That this Hon'ble Court be pleased to grant a declaration that the defendants their servants and agents have no right to obstruct the Plaintiffs in any manner whatsoever from installing and/or erecting the 2 Iron Gates at the entrance of the suit property i.e. property bearing S.No.292(pt); H.No.11(pt); CTS No.5144 admeasuring 15,579.27 sq.mtrs. or thereabouts equivalent to 18,432.67 sq.yards situate at Village Kole Kalyan, Kalina Santacruz (E), Mumbai 400 098 from the CST Road side at Points AB and CD as indicated in plan, Exhibit "C" to the Plaint;

(b) That this Hon'ble Court be pleased to grant a permanent Order of Injunction restraining the Defendants, their servants and agents from in any manner obstructing the Plaintiffs from installing and/or erecting the 2 Iron Gates at the entrance of the suit property i.e. Property bearing S.No.292(pt), H.No.11(pt); CTS No.5144 admeasuring 15,579.27 sq.mtrs. or thereabout equivalent to 18,432.67 sq.yds situate at Village Kole Kalyan, Kalina, Santacruz(East), Mumbai 400 098 from the C.ST.Road side at Points AB and CD as indicated in Plan, Exhibit "C" to the Plaint;

(c) For interim and ad-interim reliefs in terms of prayer clause (b) above;

(d) For such other and further reliefs as the nature and circumstances of the case may require;

(e) For costs of the present suit."

In this suit the plaintiffs took out Notice of Motion

No.3408 of 2005 and prayed for interim relief in following terms.

> (a) That this Hon'ble Court be pleased to grant a temporary Order of Injunction restraining the Defendants, their servants and agents from in any manner obstructing the Plaintiffs from installing and/or erecting the 2 Iron Gates at the entrance of the suit property i.e. Property bearing S.No.292(pt),H.No.11(pt); CTS No.5144 admeasuring 15,579.27 sq.mtrs. or thereabout equivalent to 18,432.67 sq.yds. situate at Village Kole Kalyan, Kalina, Santacruz (E), Mumbai 400 098 from the C.S.T.Road side of Points AB and CD as indicated in plan;
>
> (b) Interim and ad-interim reliefs in terms of prayer (a) above be granted;
>
> (c) Costs of this Notice of Motion;
>
> (d) For such other and further reliefs as the nature and circumstances of the case may require;

The Notice of Motion came to be dismissed by the trial Court by the impugned Judgment Order dated 6th June, 2006. The only relevant discussion for dismissing the Notice of Motion can be discerned from the contents of paragraph-13 of the Judgment.

6. The trial Court first noted that prima facie plaintiffs are the owners of the suit property and wanted to erect two iron gates at the entrance of the property at the insistence of the 81 occupants of the property, so as to secure the property. It is then noted that several litigations were pending between the parties. Perhaps, that is the sole reason which weighed the trial Court for refusing to grant interim relief as prayed by the plaintiffs. This view is the subject matter of challenge in the present appeal.

7. Having considered the rival submission, there there is no doubt about the existence of Conveyance deed in favour of the plaintiffs dated 15th June, 2004. There is also no doubt that the said conveyance deed has been registered on 6th July, 2004. Going by the said registered conveyance deed, it is obvious that the plaintiffs have become owner of the suit property. As owners of the suit property therefore, they are entitled to take necessary steps such as, erecting gates at the entrance of the property to secure the property. The objection of the defendants is that they were oral lessees in respect of the suit property and the owners cannot be permitted to erect two iron gates at the entrance of the property.

8. There is nothing on record to indicate that the purpose of putting up the two iron gates at the entrance of the property was to obstruct the peaceful enjoyment of the occupants of the suit property. On the other hand, the 81 occupants have insisted for putting up such iron gates for securing the property. The argument of lessees is that, though right has been created in favour of the appellants, the registered conveyance deed is sham and bogus. That argument cannot be accepted at this stage. The respondents have not challenged the efficacy of the registered conveyance deed which is operating in favour of the plaintiffs so far. Indeed, the counsel for the respondents would contend that the respondents are in the process of instituting the suit for appropriate declaration with regard to the registered conveyance deed. Assuming that such a suit is to be filed, that cannot affect the right of the plaintiffs for the present so long as registered conveyance deed is in operation. The fact that Apex Court has granted liberty to the respondents to take recourse to such remedy, does not mean that the appellants who are the owners of the property, can be obstructed from taking such steps, as are necessary to preserve and protect the property. As mentioned

earlier, it is matter of record that the two iron gates at the entrance of the property were in existence even prior to 2002, which allegedly came to be illegally removed by the Constituted Attorney of respondents.

9. Taking over all view of the matter, in my opinion, the trial Court, having answered the issue of prima facie case made out by the appellants/plaintiffs, committed manifest error in rejecting the prayer for interim relief and dismissing the Notice of Motion on the specious ground that several litigations were pending between the parties. The fact that several litigations are pending, as observed earlier, cannot preclude the real owners of the suit property to take such steps as are necessary to preserve and protect the suit property.

10. Counsel for the respondents placed reliance on the decision of the Apex Court in the case of **Maharwal Khewaji Trust Vs. Baldev Dass reported in 2004 SCW 6333** to contend that the trial Court has rightly followed the principle stated therein that when several litigations were pending between the parties, granting of interim relief in favour of the

plaintiff would be inappropriate. The observations of the Apex Court are in the fact situation of the case before it. The Apex Court has observed that it is not appropriate to allow changes of status quo of property during the pendency of litigations. By putting up two iron gates at the entrance of the suit property, which iron gates were already in existence prior to 2002 and was illegally removed, by no stretch of imagination would result in change of status quo of the property as such. On the other hand, putting iron gates at the entrance, as proposed by the plaintiffs would secure and preserve the property. Moreover, substantial number of occupants (about 81) were wanting the erection of such iron gates.

11. I am not, for the present, examining the other issues as were argued by the counsel for the appellants that the respondents in fact have no subsisting right in respect of the suit property, assuming there was oral lease in favour of the respondents, as claimed by them. Those issues will have to be considered at the appropriate stage. For the present, as prima facie case is made out and the balance of convenience is also in favour of the plaintiffs and that no prejudice or irreparable loss

would be caused to the defendants, if the two iron gates were to be installed at the entrance of the suit property, so as to preserve and protect the property, the appropriate order in my opinion, is to make the Notice of Motion absolute in terms of prayer clause (a).

12. Accordingly, this appeal succeeds. The Impugned Judgment and Order is set aside and instead, the Notice of Motion is made absolute in terms of prayer clause (a).

13. Appeal as well as civil application disposed of accordingly.